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SUBJECT: RIGHT TO FOOD: REPORT OF SECOND SESSION,  
INTERGOVERNMENTAL WORKING GROUP ON VOLUNTARY GUIDELINES,  
27-29 OCT 2003

REFS: (A) 03 ROME 4443, (B) 03 ROME 1380

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1. (SBU) Summary: The second session of the Intergovernmental Working Group (IGWG) for the Elaboration of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security met in Rome October 27-29. Delegations gave their initial reactions to the draft Voluntary Guidelines produced by the IGWG's Bureau. (See Ref. A.) Comments and proposals raised by delegations and NGO representatives during the meeting indicated that, as more detailed, textual proposals are placed on the table in an upcoming February 2-5, 2004, negotiating round, the US delegation will confront problematic proposals on issues ranging from the characterization of an international right to "the progressive realization of the right to adequate food" to proposals from many developing countries and NGOs to use this exercise to reshape current international trade, finance, and development assistance regimes to expressly take into account a right to food and food security. The US delegation believes, and Mission concurs, that an EB officer would be an important addition to the US Delegation in the February round. End Summary.

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BACKGROUND  
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2. (SBU) Operative paragraph 10 of the 2002 Declaration of the World Food Summit: five years later invited the FAO to establish an intergovernmental working group "to elaborate, in a period of two years a set of voluntary guidelines to support member states' efforts to achieve the progressive realization of the right to adequate food in the context of national food security." An introductory IGWG session was convened in March 2003 (Ref B). In the months following that session, a seven-member Bureau (based on FAO regions) working with the FAO Secretariat developed an opening text of the guidelines.

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(See Ref A and previous). In an attempt to exercise more control over the text, the United States became the North American member of the bureau.

3. (SBU) During the Bureau process over the summer of 2003, the United States identified a series of problems with the FAO Secretariat's draft text and came to the Bureau sessions with detailed and extensive proposals, inter alia to: (1) delete or correct problematic language that would mischaracterize the nature of a food-related right under international law or imply US concurrence with international obligations that it does not accept; (2) resist language, in the international arena, inconsistent with US policy in the area of the provision of international food aid, embargoes, and other international economic trade and monetary policies; and (3) otherwise keep the negotiations focused on the limitations of the IGWG's mandate by, inter alia, deleting language that was not voluntary, that would purport to apply to international armed conflict and foreign occupation, or that attempted to instruct international organizations (including the WTO and the World Bank) on how they should conduct their operations.

4. (SBU) As noted in Ref. A, the USG was extremely successful in correcting these problems in the Secretariat's text at the final September 15-19 Bureau

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meeting. As described in the paragraphs below, a significant element in the October IGWG was the desire and intention expressed by many developing countries,

some developed countries (notably, Switzerland and Norway), and NGO participants to reinsert all of these problematic elements into the Voluntary Guidelines.

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THE OCTOBER MEETING  
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15. (U) Representatives from 89 governments, the United Nations and three UN specialized agencies, one intergovernmental organization (the ICRC), and 23 NGOs participated in the session. Ambassador Mohammad Saeid

Noori-Naeeni from Iran chaired the three-day meeting. As the draft opening text of the Voluntary Guidelines had only been circulated three weeks before the meeting, delegations at the session were invited to give comments and reactions to the text, without making specific textual proposals.

16. (SBU) Status of the text. As noted above, prior to the meeting, the Bureau held intensive discussions to develop the opening text. As the final draft reflected many compromises among the regional group bureau members, it was agreed that all regions would support making the Bureau text the basis for the IGWG negotiations. Although this outcome ultimately prevailed, it became clear from the opening interventions of many developing countries (including Egypt, Venezuela, Syria, South Africa, and Jamaica) that many delegations would attempt to make extensive changes to that text.

17. (SBU) Opening Remarks. After a short introductory greeting from Chairman Noori, the FAO, as host of the session, was invited to give an opening statement of welcome. Seizing the opportunity, Hartwig de Haen, Assistant Director-General, Economic and Social Department, expressly availed himself of the opportunity to give what he described as the FAO's policy views on how the Voluntary Guidelines should be drafted. In this, he stated his opinion both that the IGWG should not take a "least common denominator approach" and that the Committee on Economic, Social and Cultural Rights' ("ESC Committee") General Comment 12 should be considered to be the authoritative interpretation of the right to adequate food (a position expressly at odds with USG views).

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SUBSTANTIVE REACTIONS TO THE INITIAL DRAFT  
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18. (U) As noted above, comments by delegations and NGOs were kept at a fairly general level and textual proposals to amend the draft were not offered. That said, it became clear that many developing countries, some developed countries (most notably Norway and Switzerland), and the food NGOs attending the conference will propose a series of changes to the text in the next negotiating round.

Legal Issues  
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19. (SBU) Paragraph 2 of the Introduction currently contains problematic language that appears to be an attempt to describe the scope and content of the progressive realization of a right to adequate food. Although the United States delegation currently believes the language goes beyond the current legal scope of the Covenant on Economic Social and Cultural Rights, Norway, Jamaica, Venezuela and Cuba, as well as representatives from the ESC Committee, the CHR's Special Rapporteur on the Right to Food, and various NGOs argued that this language was not sufficiently expansive, and thus reflected a "cutting back" of the right to adequate food. Second, this group of participants further argued that General Comment 12 should be expressly referenced in the Guidelines. Third, the group further argued that the operative language in the guidelines should be made stronger to at a minimum use the word "should" and, in some cases, use the word "shall." Fourth, Jamaica, South Africa, Switzerland and representatives from the ESC Committee, the CHR's Special Rapporteur on the Right to Food, and various NGOs further argued for the addition of language favoring the justiciability (i.e., the ability for citizens to bring civil judicial enforcement actions in court) of the right to adequate food. A smaller but still vocal group of participants (including Peru) further argued that the Guidelines should have provisions describing obligations of multinational corporations relating to the right to adequate food. This proposal mirrors a highly objectionable section in this year's Special Rapporteur's report to the CHR, which, among its other failings, argued that corporations were competent to violate international law related to a right to food and that States had separate and independent

international law obligations to prevent such violations.

10. (SBU) The United States delegation expressed its opposition to these suggestions. A copy of the US intervention appears after paragraph 20. Canada somewhat vaguely expressed its general agreement with the US approach on legal issues. The EU, which was internally divided on many of these issues, did not address many of the legal issues, but did make two helpful points: (1) that the Guidelines should not imply that corporations have obligations under international law; and (2) that the Guidelines should not contain language either stating of creating an impression that States' international legal obligations apply outside of their territory (e.g., that Country A could violate a right to food with respect to citizens in Country B by the way it conducted its international assistance policies.)

#### International Framework

11. (SBU) Apart from the two paragraphs in draft Guideline 14 on International Food Aid, language describing the "International Framework" related to the right to food and food security appear in Part V of the Guidelines. (FYI: Of the current twelve pages of the Guidelines, the current eleven paragraphs in Part V are under a page in length.) As reported in paragraph 9 of Ref. B, the US Bureau member was able in the final Bureau meeting to have deleted a series of problematic proposals on this subject. During the October IGWG session, it became evident that many developing country delegations, with support from the Special Rapporteur and NGOs, hope to add new guidelines on how the activities of international organizations and the operation of the international trade and financial systems should take into account the right to adequate food and food security.

12. (SBU) Although the current draft of Part V with only one exception is not substantively problematic, the US delegation has from the beginning of the talks opposed having a section describing the international framework. Apart from taking a view that the mandate of the negotiations was limited to actions within a country's territory, the US delegation believed and believes that any international section would become a magnet for unacceptable proposals. Although, at the first meeting of the IGWG, the EU and Japan opposed having provisions on the international framework, it became clear during the Bureau sessions that the EU would not continue to oppose having such language in the Guidelines. At IGWG, the Japanese reiterated its "preference" for no international section, but quickly undercut that position by stating that it was more important that there not be language on international trade. At the October IGWG session, Italy, speaking as President of the EU, reserved its position on whether the Guidelines should have an international section, but then gave substantive comments on what such a section should and should not contain. The United States was alone in taking a clear position against an international section, in part to give itself whatever leverage it could to resist extreme proposals. That said, virtually all other delegations -- including the spokespersons for the Asian, African, Latin American, and Near Eastern Groups -- spoke of the importance of there being an international section in the Voluntary Guidelines. Brazil made the false but superficially attractive point that an international section focusing on the responsibilities of developed countries was important to balance the rest of the Guidelines' purported focus, at the domestic level, on the obligations of developing countries. (FYI: This representation is almost entirely false, as the guidelines apply to both developed and developing countries.)

#### Trade and Investment Provisions

13. (SBU) Many developing countries and representatives from the Special Rapporteur and NGOs spoke at length on the need to add directive language in the Guidelines that the international trade and financial systems should be operated in a manner to increase access to food. (As specific proposals were not solicited, the precise content of these ideas, perhaps mercifully, was never

made clear.) Unless stated otherwise, the representatives of the Special Rapporteur and NGO's supported these developing country views.) Mexico stated that there needed to be a guideline on what it described as "unfair trade practices." Egypt, speaking for the Near East region, and Chile called for language ensuring developing country access to markets. China, Bangladesh, South Africa, the Philippines, Jamaica, Egypt and Brazil

stated that there needed to be additional language to express the importance of developed countries' increasing developing countries' access to their markets (the current text has a neutral reference to the Doha mandate in this regard). The Philippines went a step further (or perhaps only a step more specific) to suggest that there should be differentiated responsibilities, where developed countries would assume greater obligations than developing countries. With respect to the operation of the international finance system, the same group of countries indicated, without offering specifics, that the guidelines should further take into account the needs of developing countries. Egypt and Venezuela suggested that there be a more specific provision on debt relief. Jamaica called for a provision to increase the commitment of developed countries to provide official development assistance.

¶14. (SBU) In addition to the points made by the US delegation opposing these proposals (see generally, the opening statement after Para 20), Japan stated that it did not support any provisions on trade. Italy, speaking on behalf of the EU, after reserving its position generally on whether there should be an international section, stated that it would be important that any language dealing with international trade be consistent with the work currently being done at the WTO. Canada echoed this point. Australia, which would normally be in strong agreement with points made by the United States on this and other issues, staffed this delegation from its FAO mission and made virtually no interventions during the meeting.

#### International Food Aid -----

¶15. (SBU) Due in part to the efforts of the US Bureau members, the current draft guideline 14 contains two anodyne provisions on international food aid. A few delegations -- most vocally Venezuela -- stated that they would like to see additional guidelines: (1) to instruct or otherwise encourage developed countries to increase international food aid; (2) to end practices of using such food aid to "dump" food surpluses. Fian International, which spoke at length throughout the negotiations, stated that there should be a guideline calling for the renegotiation of the Food Aid Convention.

#### Genetic Resources -----

¶16. (SBU) Again due to changes by US Bureau members, current Guideline 7d contains an anodyne provision on genetic resources for food and agriculture. Peru indicated that it would like to see new language calling for the protection of genetic resources in countries of origin. Mexico and Iran stated that they would like more specific references in the Guidelines to the provisions in the Convention on Biological Diversity. Bangladesh argued that agricultural genetic resources should be considered to be public goods and that the guidelines should recognize "farmers rights." Although specific proposals were not offered, it seemed clear to the US delegation that problematic proposals will probably be put on the table in the February negotiating round.

#### Law of War and Foreign Occupation -----

¶17. (SBU) As reported in Ref. A, Para 9, the US representative to the Bureau at the final Bureau meeting was able to delete a problematic Guideline from the Secretariat's draft titled "Armed Conflicts." In its

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place, the current draft Guidelines contain in the preface the following language: "These Guidelines do not address armed conflict and international humanitarian law. It should be borne in mind, however, that states

have assumed important obligations related to this subject matter under that body of law." In the October IGWG meeting, Switzerland, Egypt, Syria, Iran, Cameroon, and the representative from the ICRC objected to the absence of substantive provisions on the right to food during armed conflict. Switzerland, in the margins of the meeting, circulated a formal, and substantively unacceptable, proposal on the subject. Iran (the delegation as opposed to Conference Chairman Noori) added to this its view that there should be a guideline condemning countries from starting wars.

¶18. (U) Syria stated that there should be a guideline dealing with the right to adequate food and foreign occupation. Although Syria did not speak to all of the specifics of its proposal, it suggested that such a

guideline would condemn foreign occupations, provide that the occupying power must not interfere with the right to adequate food of the people in an occupied territory, that occupying powers should not use food to "punish" that population, and that the activities of an occupying power should be reviewed by the ICRC.

19. (U) With respect to both law of war and foreign occupation, the US delegation explained that these issues were not within the mandate of this negotiation and that there is already a detailed and complex body of international law applicable to these situations. Any attempt even to characterize this body of law would invariably be, at best, selective and incomplete and, at worst, inconsistent with this important body of law.

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GENERAL CONCLUSIONS  
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20. (SBU) As reflected in the discussion above, the US delegation to the February 2-5 negotiating round will confront a series of unacceptable proposals on a wide range of issues. While the delegation is currently well staffed to deal with the legal, human rights, and food-policy issues, it would greatly benefit from the addition of an EB officer to help the delegation deal with proposals on a wide range of international trade and finance issues.

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TEXT OF U.S. OPENING STATEMENT  
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The United States is pleased to participate in this Intergovernmental Working Group. The United States is deeply committed to international food security and our actions bear this out. This statement is of a general nature, and we will present our thoughts on individual guidelines when we discuss each of these guidelines later in this session. We will not attempt to address specific proposals by delegations.

We believe the Voluntary Guidelines will be most useful if they focus on practical steps to achieve national food security and if they address ways that governments, non-governmental organizations, and the private sector can work together towards that end. As reflected in the current structure of the guidelines, these practical steps include: increasing agricultural productivity; creating an enabling environment; promoting transparent and accountable government; boosting agricultural science and technology; developing domestic market and international trade opportunities; securing property rights and access to finance; enhancing human capital; protecting the vulnerable; advancing the status of women; and mainstreaming a gender perspective in national institutions, policies, and budgets around the world. It is also important that the guidelines address the fundamental role played by good governance, accountability, and the establishment or strengthening of democratic institutions as a means to achieving food security.

We believe the draft document before us is an excellent starting point for our deliberations, and agree with other delegations that have supported your call to make this the basis of our work. Through intensive work, the Bureau, representing all regions of the world and in

consultation with civil society, produced this draft. Our Chairman has clarified that the Bureau believed the text to be a good basis for conducting our negotiations. While improvements to the text are necessary and appropriate, we do not believe that a restructuring of the guidelines is appropriate, nor do we think there is time for us to do so. Indeed we believe that an attempt to restructure the Guidelines, as well intentioned as it is, will run the risk of our not reaching a successful conclusion of our work.

We have a few general observations regarding the draft document and the process for developing them that we would like to make:

First, as a practical matter, we note that there is little time available for delegations to negotiate these Voluntary Guidelines. Our experience in large negotiating sessions has proven time and again that delegations can typically reach agreement on practical measures that should be taken to address important problems. In contrast, delegations typically cannot resolve questions involving competing characterizations of international law. Not surprisingly, countries are not prepared to accept descriptions of international legal obligations with which they disagree. Arguments

over such issues are contentious and un-resolvable. The views of the United States on the legal issues of what is described in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural rights as the progressive realization of the right to an adequate standard of living, including food, are well known to other delegations. [insert footnote]. Just as we would not insist that other delegations be asked to accept our interpretation, by memorializing such views in these Guidelines, we would expect that others to not expect us or other countries to be required to accept in this document descriptions of international law with which they do not agree. In the context of the current negotiation, not only has the Inter-Governmental Working Group not been given a mandate to attempt to interpret existing legal instruments, but an attempt to do so would divert limited time and attention away from national actions that can help provide people with better access to food.

Second, as we stated at the first meeting of the IGWG, we note that the Inter-Governmental Working Group is mandated to focus on national food security. Accordingly, we do not believe that Part V (International Framework) is within the mandate of the IGWG. We would note that this is a long-held and crosscutting position of our government, and is not a criticism of the sentiments conveyed in Part V of the current draft. As a practical matter, we would be concerned that widely divergent views of governments on international cooperation -- many of which we have heard this afternoon -- may present a stumbling block to completing our negotiations within the time available to us. We would note our agreement with the delegation of Japan that we not attempt to deal with issues within the mandate of the World Trade Organization.

Third, we agree fully with the decision taken by the Bureau not to attempt in these Guidelines to address armed conflict and international humanitarian law. Even if it were somehow possible to deal with this extraordinarily complex issue within the limited time available to us, the law of armed conflict and international humanitarian law is dealt with by other international organizations and processes. These issues lie outside the remit of this negotiation.

Fourth, we would not support adding to our mandate the recommendations suggested by the Special Rapporteur in its most recent report, nor do we agree with the descriptions of international law contained in that report.

Finally, I wanted to reiterate that we are very happy to participate in this important process and we are fully committed to work with our colleagues in this room to help you, Mr. Chairman, make this process a success.

Begin Footnote: The Universal Declaration of Human

Rights states: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services." The United States believes that the attainment of the right to an adequate standard of living is a goal or aspiration to be realized progressively that does not give rise to international obligations or domestic legal entitlements; nor does it diminish the responsibilities of national governments toward their citizens. The United States

understands the right of access to food to mean the opportunity to secure food, and not guaranteed entitlement. End footnote.

End of US Statement

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U.S. INTERVENTION ON LEGAL ISSUES  
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Characterization of the "right" in the Voluntary Guidelines

In our discussion of the legal issues, there are many general issues where there are common views and a few important issues of divergence. Areas many delegations seem to agree:

-- that the Voluntary Guidelines are, by definition, voluntary,

-- that they do not create new obligation on States, and that their drafting should not contain words of legal obligation;



-- that these negotiations of the Voluntary Guidelines are not a forum to create new international law, to renegotiate international agreements, or to attempt to forge consensus on differing interpretations of international treaties;

-- that statements regarding the obligations of states parties to treaties need to be clearly expressed and should also be clear that such obligations apply with respect to such states parties; and

-- that the Voluntary Guidelines should not appear to derogate from existing international treaty obligations.

These points of convergence, however, contain the seeds of an area of disagreement. That is the circumstance in which countries do not agree on the underlying scope and contours of their obligations under particular treaties.

As the United States said in its opening comments, countries are unwilling to accept descriptions of international treaties and international law generally with which they disagree. Nor, as a general matter, is it reasonable in a negotiation of a non-binding instrument such as this to expect a country to agree to a description of international law with which it disagrees.

For this reason, political instruments typically do not attempt to characterize or describe the specific scope of obligations contained in international treaties, but simply take note of them or, where appropriate, quote word-for-word the actual language in the treaty.

-- Attempts to characterize the obligations are inherently controversial and counterproductive.

-- It is the job of the parties to treaties to determine the content of their obligations in good faith pursuant to international treaty law as set out, under customary international law, in the Vienna Convention on the Law of Treaties.

Today, speakers have quoted language from General 12 of the Committee of Economic, Social and Cultural Rights about what are described as obligations under the ESC Covenant to "respect, protect and fulfill" the right to adequate food.

-- This language appears nowhere in the Covenant.

-- Nor does the Covenant even provide for the existence of the Committee, much less give it a mandate to issue legally binding or legally authoritative interpretations of its terms.

-- The United States has great respect for the Committee and similar Committees established under other human rights treaties. States sometimes agree with interpretations offered by such committees. Sometimes states do not agree, and there is nothing in the ESC Covenant or elsewhere that provides that they are bound to.

The problem with respect to paragraph 2 in the section The Right to Adequate Food and Food Security is that the United States, a signatory to the ESC Covenant, fundamentally disagrees that the characterization of the right in this paragraph and in General Comment 12 is an accurate description of the rights contained in the ESC Covenant.

-- It is inconsistent with the interpretation the United States has consistently applied to the Covenant, which was described at length in treaty materials submitted by former President Jimmy Carter to the US Senate.

-- In the interest of time, we will not engage in a substantive legal discussion of those differences of view.

As a final matter, I would like to explain why my government cares so deeply about this issue, even though it has not ratified the ESC Covenant.

-- First, the United States is a signatory, and signatories have certain responsibilities under international treaty law.

-- Second, the precedent of citing non-binding General Comments as authoritative law could have applications in settings in which the United States is a party.

What is the solution to the problem?

-- Some delegations have expressed concerns that the characterizations of the right in the Guidelines

exaggerate the right while others are concerned that the description might restrictively interpret the ESC Covenant.

-- The way to avoid this problem is the way found in all such negotiations- to avoid characterizations and cite the actual language of the instrument in question.

Justiciability of, and third party responsibilities relating to, the progressive realization of the right to adequate food.

On the issues of justiciability, as described above we do not believe that the right to food is justiciable under the International Covenant on Economic, Social and Cultural Rights or other instruments of international law.

-- Research circulated by the FAO Secretariat indicates that there is a very wide array of methods for countries under national laws to deal with providing access to food.

-- Some countries may chose to create a right; some may not.

-- Even among those that have a right under national law, many do not create a right for individuals to bring lawsuits against their government for enforcing such rights.

-- It is this private right to bring lawsuits, which is what is typically meant by those arguing for the creation of a "justiciable" right.

Regarding third parties, we do not agree there is a formal international legal obligation to "protect" the progressive realization of the right to adequate food.

-- Thus, actions against private actors are not provided for in the ICESCR or otherwise in international law.

-- We would not want to include language on this subject in the Guidelines.

End of US Intervention on Legal Issues.

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